

## HOUSE BILL NO. 94

INTRODUCED BY K. VAN DYK

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE UNDERGROUND STORAGE TANK ADMINISTRATIVE PENALTY LAWS; ELIMINATING DEPARTMENT OF ENVIRONMENTAL QUALITY RULEMAKING AUTHORITY FOR A PENALTY SCHEDULE; MODIFYING THE ADMINISTRATIVE PENALTY NOTICE REQUIREMENTS; ALLOWING A PERSON ASSESSED A PENALTY TO REQUEST A HEARING BEFORE THE BOARD OF ENVIRONMENTAL REVIEW INSTEAD OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY ESTABLISH A FIXED SCHEDULE OF MAXIMUM AND MINIMUM PENALTIES FOR SPECIFIC VIOLATIONS; AMENDING SECTIONS 75-11-505, 75-11-512, AND 75-11-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 75-11-505, MCA, is amended to read:

**"75-11-505. Administrative rules.** The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

- (1) reporting by owners and operators;
- (2) financial responsibility;
- (3) release detection, prevention, and corrective action;
- (4) procedures and standards for the issuance, nonissuance, renewal, nonrenewal, modification, revocation, suspension, and enforcement of permits authorizing the operation of underground storage tanks;
- (5) standards for design, construction, installation, and closure;
- (6) development of a schedule of annual fees, not to exceed \$108 for a tank over 1,100 gallons and not to exceed \$36 for a tank 1,100 gallons or less, for each tank, for tank registration to defray state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.
- (7) ~~a penalty schedule and a system for assessment of administrative penalties, notice, and appeals~~

1 under 75-11-525; and

2 (8) delegation of authority and funds to local agents for inspections and implementation. The delegation  
3 of authority to local agents must complement and may not duplicate existing authority for implementation of rules  
4 adopted by the department of justice that relate to underground storage tanks."

5  
6 **SECTION 2. SECTION 75-11-512, MCA, IS AMENDED TO READ:**

7 **"75-11-512. Administrative enforcement.** (1) When the department believes that a violation of this part  
8 or a rule adopted under this part has occurred, it may serve written notice of the violation personally or by certified  
9 mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or the rule  
10 alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary  
11 corrective action within a reasonable period of time stated in the order. The order becomes final unless, within  
12 30 days after the notice is served, the person named requests, in writing, a hearing before the board. On receipt  
13 of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing receipt.

14 (2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall  
15 either affirm or modify the department's order. An order issued by the department or by the board may prescribe  
16 the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing,  
17 the board finds that a violation has not occurred, it shall rescind the department's order.

18 (3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

19 (a) require the alleged violator to appear before the board or department, by subpoena or subpoena  
20 duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or  
21 to provide information regarding the alleged violation or its actual or potential impact on the public health and  
22 welfare or the environment;

23 (b) initiate action under 75-11-513, 75-11-514, or 75-11-516; or

24 (c) assess administrative penalties and issue corrective action orders under 75-11-525.

25 (4) In the case of disobedience of any subpoena issued and served under this section or of the refusal  
26 of any witness to testify as to any material matter with regard to which the witness may be interrogated in a  
27 hearing or investigation before the board or the department, the board or department may apply to any district  
28 court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall  
29 hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court  
30 shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the

1 same manner and by the same procedures as is provided for like conduct committed in the course of civil actions  
2 in district court.

3 (5) If a person fails to comply with an order issued pursuant to subsection (1) or (3) within the time  
4 allowed in the order, the department may enter the property on which the underground storage tank that is in  
5 violation is located and temporarily close the tank. If the department finds that permanent closure is necessary  
6 to prevent substantial environmental harm or because the owner or operator is unlikely to comply with the order,  
7 it may permanently close the tank.

8 (6) This section does not prevent the board or department from making efforts to obtain voluntary  
9 compliance through warning, conference, or any other appropriate means."  
10

11 **Section 3.** Section 75-11-525, MCA, is amended to read:

12 **"75-11-525. Administrative penalties for violations -- appeals -- venue.** (1) (a) A person who violates  
13 any of the provisions of this part or any rules promulgated under the authority of this part may be assessed and  
14 ordered by the department to pay an administrative penalty not to exceed \$500 for each violation. This limitation  
15 on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation  
16 and each day that it remains uncorrected constitutes a separate violation. The department may suspend a portion  
17 of the administrative penalty assessed under this section if the condition that caused the assessment of the  
18 penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be  
19 made in conjunction with any order or other administrative action authorized by this chapter.

20 (b) Penalties assessed under this subsection (1) must be determined in accordance with the penalty  
21 factors in 75-1-1001.

22 (2) When the department assesses an administrative penalty under this section, it must have written  
23 notice served personally or by certified mail on the alleged violator or the violator's agent. For purposes of this  
24 chapter, service by mail is complete on the day of receipt ~~mailing~~ RECEIPT. The notice must state:

25 (a) the provision alleged to be violated;

26 (b) the facts alleged to constitute the violation;

27 (c) the amount of the administrative penalty assessed under this section;

28 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the  
29 assessment of the penalty;

30 (e) the nature of any corrective action that the department requires, whether or not a portion of the

1 penalty is to be suspended;

2 (f) as applicable, the time within which the corrective action is to be taken and the time within which the  
3 administrative penalty is to be paid; and

4 (g) the right to appeal or to a hearing to mitigate the penalty assessed ~~and the time, place, and nature~~  
5 ~~of any hearing; and~~

6 ~~—— (h) that a formal proceeding may be waived.~~

7 (3) ~~The department shall provide each~~ A person assessed a penalty under this section ~~an opportunity~~  
8 ~~for~~ may request a hearing before the board to either contest the alleged violation or request mitigation of the  
9 penalty. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2,  
10 chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must  
11 be held in Lewis and Clark County or the county in which the alleged violation occurred. ~~This subsection does~~  
12 ~~not apply until the department gives written notice, served personally or by certified mail, to the alleged violator~~  
13 ~~or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The~~  
14 ~~notice must state:~~

15 ~~—— (a) the provision allegedly violated;~~

16 ~~—— (b) the facts that constitute the alleged violation;~~

17 ~~—— (c) the specific nature of any corrective action that the department requires, estimated costs of~~  
18 ~~compliance with the action, and where to receive help to correct the alleged violation; and~~

19 ~~—— (d) a timetable that a reasonable person would consider appropriate for compliance with the alleged~~  
20 ~~violations.~~

21 ~~(4) The department shall publish a schedule of maximum and minimum penalties for specific violations.~~  
22 ~~In determining appropriate penalties for violations, the department shall consider the gravity of the violations and~~  
23 ~~the potential for significant harm to the public health or the environment. In determining the appropriate amount~~  
24 ~~of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the~~  
25 ~~department shall consider the cooperation and the degree of care exercised by the person assessed the penalty,~~  
26 ~~how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the~~  
27 ~~environment from the violation.~~

28 ~~(5)~~(4) If the department is unable to collect an administrative penalty assessed under this section or if  
29 a person fails to pay all or any portion of an administrative penalty assessed under this section, the department  
30 may take action in district court to recover the penalty amount and any additional amounts assessed or sought

1 under this chapter. The action must be brought in the district court of the county in which the violation occurred  
2 or, if mutually agreed on by the parties in the action, in the district court of the first judicial district, Lewis and Clark  
3 County.

4 ~~(6)~~(5) Action under this section does not bar action under this chapter or any other remedy available to  
5 the department for violations of underground storage tank laws or rules promulgated under those laws.

6 ~~(7)~~(6) Administrative penalties collected under this section must be deposited in the state general fund."  
7

8 NEW SECTION. **Section 4. Saving clause.** [This act] does not affect rights and duties that matured,  
9 penalties that were incurred, or proceedings that were begun before [the effective date of this act].  
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11 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.  
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